

**Matter of Reyes v Suffolk County Traffic & Parking
Violations Agency**

2022 NY Slip Op 34543(U)

June 27, 2022

Supreme Court, Suffolk County

Docket Number: Index No. 623973/2021

Judge: George Nolan

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 623973/2021

SUPREME COURT – STATE OF NEW YORK
PART 55 – SUFFOLK COUNTY**P R E S E N T:**Hon. George Nolan

Justice Supreme Court

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In the Application of
YESICA REYES,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE SUFFOLK COUNTY TRAFFIC AND
PARKING VIOLATIONS AGENCY, and
KENNETH DIAMOND,Respondents.
-----x

Mot. Seq. No. 001 – MG CaseDisp

Orig. Return Date: 01/21/2022

Mot. Submit Date: 04/13/2022

PETITIONER'S ATTORNEY

SCOTT C. LOCKWOOD, ESQ.

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Deer Park, NY 11729

RESPONDENTS' ATTORNEYSUFFOLK COUNTY ATTORNEY'S
OFFICE

100 Veterans Memorial Highway

Hauppauge, NY 11788

Upon the e-filed documents numbered 01 through 19, and upon due deliberation and consideration by the Court of the foregoing papers, it is hereby

ORDERED that the motion of respondents Suffolk County Traffic and Parking Violations Agency and Kenneth Diamond for an order pursuant to CPLR 3211(a)(2), (3), (5) and (8) and CPLR 7804(f), dismissing the petition of Yesica Reyes, is granted.

The respondent Suffolk Country Traffic and Parking Violations Agency ("SCTPVA") is authorized under various provisions of state and local law to assist the Suffolk County District Court in the disposition of traffic and parking infractions. Vehicle and Traffic Law §1690(1) authorizes the Administrative Judge of Suffolk County to assign judicial hearing officers to conduct the trials of these low level, non-criminal matters. Vehicle and Traffic Law §1690(1) further provides that "such judicial hearing officers shall be village court justices or retired judges either of which shall have at least two years of experience conducting trials of traffic and parking violations cases and shall be admitted to practice law in this state." Respondent Diamond is a judicial hearing officer for the SCTPVA.

It is undisputed that on May 9, 2019, petitioner Yesica Reyes was convicted of speeding after being tried in absentia before JHO Diamond in the SCTPVA. The petitioner appealed her conviction to the Appellate Term, Second Department, 9th and 10th Judicial District, arguing that

Diamond abused his discretion when he denied her counsel's request for an adjournment. By a decision dated December 9, 2021, the Appellate Term affirmed petitioner's conviction.

On December 30, 2021, the petitioner initiated this Article 78 proceeding seeking a judgment 1) in the nature of a writ of certiorari against respondent SCTPVA, vacating her conviction on the basis that Diamond was "barred from exercising judicial power in the County of Suffolk, since he resided, and resides in the County of Nassau" and 2) in the nature of a writ of prohibition, barring Diamond from serving as a SCTPVA hearing officer because he resides in Nassau County. The petitioner argues that SCTPVA judicial hearing officers must reside in the County of Suffolk because the State Constitution requires District Court judges to reside in the district in which they sit (NY Constitution Article 6, Section 16[h]).

The certiorari branch of the petition which seeks to vacate the petitioner's speeding conviction, interposed more than two years after the conviction was handed down and after it was affirmed by the Appellate Term is barred by the four-month statute of limitations applicable to this proceeding (CPLR 217).

"[A] petition seeking a writ of prohibition must demonstrate that: 1) a body or officer is acting in a judicial or quasi-judicial capacity, 2) that body or officer is proceeding or threatening to proceed in excess of its jurisdiction and 3) petitioner has a clear legal right to the relief requested" (*Matter of Town of Huntington v. New York State Div. of Human Rights*, 82 NY2d 783, 604 NYS2d 541 [1993]).

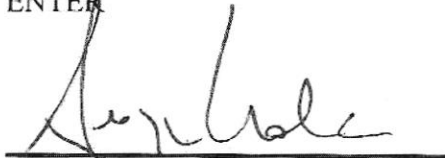
Preliminarily, it appears that prohibition does not lie in this matter as the petitioner is seeking to review and vacate a determination already made by the respondents, not restrain the respondents' continuing exercise of authority (*see Vargason v. Brunetti*, 241 AD2d 941, 661 NYS2d 345 [4th Dept 1997]). To the extent petitioner seeks a judgment barring Diamond from serving as a judicial hearing officer in other matters assigned to the SCTPVA, the Court concludes that the petitioner has failed to demonstrate a clear legal right to this relief. The petition fails to cite any constitutional or statutory provision which imposes a residency requirement upon SCTPVA judicial hearing officers.

Based on the foregoing, the petition herein is dismissed.

This constitutes the decision and Order of the Court.

DATE: June 27, 2022
Riverhead, NY

ENTER



HON. GEORGE NOLAN, J.S.C.

 X FINAL DISPOSITION

 NON-FINAL DISPOSITION